IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

AS.No. 495 of 1994()

OS.824/1990 of PRL.SUB COURT,THRISSUR
.....

APPELLANT: DEFENDANT:

KARANAMKOT ABU, BUSINESS, PUNNAYUR AMSOM
AND DESOM, CHAVAKKAD TALUK, NOW AT
P.B.No.650, ADMAK, ABUDABHI.

BY ADV. SRI N J JOHNSON

RESPONDENT: PLAINTIFF:

MARAKKAR, S/O.CHULLIYAKKAL KAMMU,
EDAPPAL AMSOM AND DESOM, PONNANI TALUK,
NOW AT BAHARIN.

BY ADV. SRI P VIJAYA BHANU

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

A.S.No.495 of 1994

Dated this the 22nd November, 2007.

J U D G M E N T

The defendant in O.S.No.824/1990, on the file of the Subordinate Judge's Court, Thrissur, is the appellant. The appeal is filed against the decree and judgment passed by the court below, by which the respondent was allowed to recover an amount of Rs.21,000/= with interest from the appellant.

2. The respondent filed a suit for recovery of money. The following were the material averments in the plaint. The respondent and appellant were working in Baharin. Appellant borrowed an amount of Rs.21,000/= from the respondent. On 11.11.1987, the appellant executed an agreement at Kunnamkulam in Kerala, in which the appellant had agreed to repay the amount on or before 11.11.1989. It was averred that in spite of repeated demands, the appellant did not pay the amount. Hence the suit.

3. The appellant filed a written statement contending that the suit was not maintainable. The averments that appellant borrowed an amount of Rs.21,000/= from the respondent at Baharin

and when they came back to India, he executed an agreement in favour of the respondent were denied. It was contended that document produced along with plaint was a fabricated one. It was contended that the appellant was threatened and the respondent obtained the signature of the appellant in a blank paper, and using that signed paper, the suit document was fabricated. It was contended that appellant was running a hotel at Baharin and respondent was working in another hotel situated near to that hotel. The respondent became inimical towards the appellant and he made several attempts to ruin the business of the appellant. It was averred that when the appellant came to his native place, respondent had also came, and the respondent along with his henchmen threatened the appellant on several occasions. Thereafter the respondent filed a petition before the Circle Inspector of Police, Kunnamkulam, raising false statements. Based on that petition, appellant was called for to the police station on 11.11.1987 and exerting pressure and coercion on the appellant, his signature was obtained in a stamp paper. It was averred that the appellant was not allowed to read the contents of the document or the same was not read over to him. He signed the document only because of fear of death. It was also contended that since he had to return back to Gulf

country, he did not file any complaint before the police. The allegation that notice was issued and he received the same was denied. It was contended that there was material alteration in the document and the document produced by the appellant was not an agreement. It was defective document and based on that document, the respondent was not entitled to get any relief. No cause of action arose as alleged in the plaint. Hence, he prayed for dismissal of the suit.

4. On the side of the respondent, Pws. 1 to 3 were examined and Exts.A1 to A4 were marked. Appellant himself was examined as DW.1. The trial court rejected the contention of coercion and found that Ext.A1 was validly executed. The suit was decreed. Challenging that decree and judgment, this appeal is filed.

5. In the appeal, the learned counsel appearing for the appellant had argued that the suit ought to have been dismissed. It is argued that finding of the court below that Ext.A1 is not vitiated by coercion or undue influence is illegal. Second contention was that no Courts in India has jurisdiction to try this case, as the entire transaction took place in Baharin.

6. It is admitted fact that plaintiff and defendant were residing in Baharin. Even according to the plaintiff, transaction took place at Baharin. According to him, both the plaintiff and defendant came back to Kerala on 11.11.1987. Defendant executed Ext.A1 agreement at Kerala. According to the plaintiff, he is entitled to get a decree for the amount based on the agreement. PW.1 is the plaintiff. He had amitted that appellant borrowed 625 Baharin Dinars, value of which will come to Rs.21,000/=, on that date, and he made several demands to the defendant for repayment of the money. P.W.1 had deposed that after reaching Kerala, appellant executed Ext.A4 agreement. In the cross examination, PW.1 had admitted that Ext.A1 agreement was executed in the premises of Kunnamkulam Police Station. He further deposed that there was talk regarding the money at the Kunnamkulam police station, and a decision was taken to execute a document, and a document was executed in the premises of the police station. He had admitted that his house is situated about 20 Kms. Away from Kunnamkulam police station. He had also admitted that he filed a complaint before the Circle Inspector of Police, Kunnamkulam, and on account of that complaint, plaintiff and defendant were called to the police station. He further admitted that he took PW.2 along with him and he purchased a stamp paper in which

Ext.A1 was written. It is also admitted that it was he who demanded execution of the document. He had also admitted that appellant as well as himself spent more than half an hour in the police station. He also admitted that he took the witness for the purpose of attesting the documents. PW.2 is stated to the President of Kunnamkulam Panchayat. In the chief examination, he had deposed that he had seen the appellant affixing the signature. PW.2 had deposed that he went to the police station as per the request of the appellant and not as requested by the respondent. In fact, he had given evidence to the effect that he along with the appellant went to the police station for more than one occasion in connection with this transaction. A close scrutiny of evidence of Pws.1 and 2 shows that PW.2 is more loyal than the plaintiff. So, the evidence of Pws.1 and 2 clearly shows that appellant was compelled to sign Ext.A1 document at the police station, and PW.1 took PW.2 along with him and he had made arrangements to see that the appellant signs the agreement at the police station.

7. The learned counsel appearing for the appellant relying on **Mathew v. Kuruvilla** (1983 KLT 104), argued that the word 'coercion' is not to be understood in the strict sense as defined under Section 15 of the Contract Act, and an agreement executed in a

police station is vitiated. Though there is no evidence to hold that appellant was detained in the police station for a long time, evidence of PW.2 shows that for more than one occasion, appellant was called to the police station for the purpose of getting Ext.A1 executed. The evidence of PW.1 clearly establishes that he went there with all preparations to get the document executed. So, the principle laid down in Mathew's case, (supra) applies to the facts of this case, and the appellant is not entitled to get any relief based on Ext.A1 agreement.

8. The learned counsel appearing for the respondent, on the other hand, has argued that even assuming that no relief is possible under Ext.A1, still the plaintiff is entitled to get a decree on the original cause of action. It is also argued that in fact the specific plea is that appellant borrowed the amount from the respondent at Baharin, and to evidence that transaction, subsequently, he executed Ext.A1 agreement on 11.11.1987. It is argued that the evidence of PW.1 corroborated by the evidence of PW.3 establishes that fact also. The learned Sub Judge has not considered whether the appellant is

entitled to get the decree based on the original cause of action. I am of the view that the matter has to go back for re-consideration of that issue.

In the result, appeal is allowed. The decree and judgment passed by the court below is hereby set aside. The suit, O.S.No.824/1990, is remanded back for fresh disposal, in accordance with law, after affording both sides, reasonable opportunity to adduce evidence.

Parties shall appear before the court below on 3.1.2008.

C.M.P.No.3015/1994 in A.S.No.495/1994 is accordingly dismissed.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

A.S.No.495 OF 1994

J U D G M E N T

Dated:22nd November, 2007.